

Introduced by Senator Florez

December 4, 2006

An act to amend Section 11564 of the Government Code, and to amend Sections 8521, 8550, 8551, 8552, 8554, 8575, and 8590 of, to amend the heading of Part 4 (commencing with Section 8520) of Division 5 of, to add Sections 8522.3, 8522.5, 8523, 8577, 8578, and 8610.5 to, to add Article 8 (commencing with Section 8725) to Chapter 3 of Part 4 of Division 5 of, and to repeal and add Article 2 (commencing with Section 8580) to Chapter 2 of Part 4 of Division 5 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 17, as introduced, Florez. Flood protection.

(1) Existing law establishes the 7-member Reclamation Board in the Department of Water Resources. Existing law requires the board members to be appointed and to serve at the pleasure of the Governor. Existing law prescribes compensation for each board member for time spent attending meetings of the board in the amount of \$100, except as specified. Existing law requires the board to elect one of its members as president. Existing law requires the board to appoint a secretary, who may be a board member, and authorizes the board to appoint a general manager, a chief engineer, and an assistant secretary. Existing law authorizes the board to employ certain other employees.

This bill would rename the Reclamation Board the Central Valley Flood Protection Board. The bill would require the board to act independently of the department. The bill would prohibit the department from overturning any action or decision by the board. The bill would increase the membership of the board from 7 to 9 members. The bill would require 7 members to be appointed by the Governor, subject to

Senate confirmation, 4 of whom would be required to meet specified eligibility requirements and 3 of whom would be designated as public members. The bill would require one board member to be appointed by the Senate Committee on Rules and one board member to be appointed by the Speaker of the Assembly and would designate those 2 members as public members. The bill, with a certain exception, would require the board members to serve 4-year terms. The bill would require the board members to receive a salary identical to that received by members of the State Air Resources Board. The bill would require the Governor to select one of the board members as president. The bill would repeal provisions relating to the appointment or employment of specified personnel and, instead, authorize the board to appoint an executive officer and chief engineer and to employ legal counsel and other necessary staff.

(2) Existing law provides that a member of the board having an interest in lands within the drainage district is not disqualified from voting to execute any part of the plans of flood control or from carrying out the objects of the board.

This bill would instead require that a member of the board comply with specified conflict of interest requirements when voting to carry out any part of a plan of flood control and when carrying out the objects of certain provisions of law relating to the board. The bill would subject the board members to specified requirements relating to conflict of interest and ex parte communications.

(3) Existing law authorizes the board to engage in various flood control activities along the Sacramento River, San Joaquin River, their tributaries, and related areas.

This bill would prohibit a board member from advocating to a federal agency on behalf of a project that has been or is reasonably anticipated to be submitted to the board for review unless the board authorizes that action in accordance with specified requirements. The bill would require the board to adopt regulations relating to evidentiary hearings and to hold evidentiary hearings to determine any matter that requires the issuance of a permit. The bill would require the board to take action only after allowing public comment and to consider, as applicable, specified matters for the purpose of taking that action in any evidentiary hearing. The bill would authorize the board to collaborate with state and federal agencies, if appropriate, regarding certain multiobjective flood management strategies. The bill would require the department to prepare a preliminary report, by December 31, 2009, on the status of

the State Plan of Flood Control and to submit the report to the board. The bill would require the department to inspect the project levees, as defined, and to include certain components in the preliminary report. The bill would require the board, by December 31, 2010, to adopt and submit to the Governor and the Legislature a final report in accordance with prescribed procedures. The bill would require the board, on or before December 31, 2010, to prepare and adopt a strategic flood protection plan. The bill would require the board to establish and update, every 5 years, standards for levee construction, operation, and maintenance. The bill would require the board to review local and regional land use plans to ensure their compliance with flood protection and public safety standards adopted by the board. The bill would require the board to review, and authorize the board to make recommendations regarding, flood control plans adopted by local public agencies. The bill would prohibit the board from allocating any funds to a local public agency for a flood control project unless the board determines that project ensures adequate flood protection consistent with existing law. The bill would establish procedures for the decertification of locally maintained flood control facilities as a part of the State Plan of Flood Control.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11564 of the Government Code is
2 amended to read:
3 11564. (a) Effective January 1, 1988, an annual salary of
4 twenty-five thousand one hundred eighteen dollars (\$25,118) shall
5 be paid to each member of the State Air Resources Board, ~~provided~~
6 *and the Central Valley Flood Protection Board, if each member*
7 devotes a minimum of 60 hours per month to state board work.
8 The salary shall be reduced proportionately if less than 60 hours
9 per month is devoted to state board work.
10 ~~The~~
11 (b) *The* annual compensation provided by this section shall be
12 increased in any fiscal year in which a general salary increase is
13 provided for state employees. The amount of the increase provided
14 by this section shall be comparable to, but shall not exceed, the

percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 2. The heading of Part 4 (commencing with Section 8520) of Division 5 of the Water Code is amended to read:

PART 4. THE ~~RECLAMATION~~ CENTRAL VALLEY FLOOD
PROTECTION BOARD

SEC. 3. Section 8521 of the Water Code is amended to read:

8521. “Board” means the ~~Reclamation~~ Central Valley Flood Protection Board. Any reference to the Reclamation Board in this or any other code means the Central Valley Flood Protection Board.

SEC. 4. Section 8522.3 is added to the Water Code, to read:

8522.3. “Facilities of the State Plan of Flood Control” means the levees, weirs, channels, and other features of the State Plan of Flood Control.

SEC. 5. Section 8522.5 is added to the Water Code, to read:

8522.5. “Project levee” means any levee that is a part of the facilities of the State Plan of Flood Control.

SEC. 6. Section 8523 is added to the Water Code, to read:

8523. “State Plan of Flood Control” means the state and federal flood control works, lands, programs, plans, policies, conditions, and mode of maintenance and operations of the Sacramento River Flood Control Project described in Section 8350, and of flood control projects in the Sacramento River and San Joaquin River watersheds authorized pursuant to Article 2 (commencing with Section 12648) of Chapter 2 of Part 6 of Division 6 for which the board or the department has provided the assurances of nonfederal cooperation to the United States, and those facilities identified in Section 8361.

SEC. 7. Section 8550 of the Water Code is amended to read:

8550. (a) The ~~Reclamation Board~~ board is continued in existence ~~within the department, but the board~~ and shall continue to exercise and have all of its powers, duties, purposes, responsibilities, and jurisdiction.

(b) Notwithstanding any other provision of law, the board shall act independently of the department. The department shall not overturn any action or decision by the board.

SEC. 8. Section 8551 of the Water Code is amended to read:

1 8551. ~~The~~ (a) *Except as provided in subdivision (g), the board*
2 *consists of seven nine members who are shall be appointed in*
3 *accordance with this section.*

4 (b) (1) *Seven members of the board shall be appointed by and*
5 *serve at the pleasure of the Governor, subject to Senate*
6 *confirmation.*

7 (2) *Of the members appointed pursuant to paragraph (1), the*
8 *following requirements apply:*

9 (A) *One person shall be an engineer.*

10 (B) *One person shall have training, experience, and expertise*
11 *in geology or hydrology.*

12 (C) *One person shall be a flood control expert with not less*
13 *than five years' experience.*

14 (D) *One person shall be an attorney with water experience.*

15 (E) *Three persons shall be public members.*

16 (c) *One member of the board shall be appointed by the Senate*
17 *Committee on Rules.*

18 (d) *One member of the board shall be appointed by the Speaker*
19 *of the Assembly.*

20 (e) *The members appointed pursuant to subdivisions (c) and*
21 *(d) shall be public members.*

22 (f) (1) *Except as provided in paragraph (2), the board members*
23 *appointed pursuant to subdivision (b), (c), or (d) shall serve*
24 *four-year terms.*

25 (2) *The board members initially appointed pursuant to this*
26 *section shall determine, by lot, that five members shall serve*
27 *four-year terms and four members shall serve two-year terms.*

28 (g) *Each board member holding office on December 31, 2007,*
29 *shall continue to serve until his or her successor is appointed and*
30 *has been qualified to hold office. The order of replacement shall*
31 *be determined by lot.*

32 SEC. 9. Section 8552 of the Water Code is amended to read:

33 8552. (a) *Each member of the board shall receive the necessary*
34 *expenses incurred by the member in the performance of official*
35 *duties, and each member of the board that is neither eligible for*
36 *nor receives any salary or other compensation for time spent*
37 *attending meetings of the board shall receive one hundred dollars*
38 *(\$100) for each day attending the meetings of the board, except*
39 *that no member shall be compensated for more than 40 days in*
40 *any one fiscal year.*

1 ~~In addition to the amounts above provided, any~~

2 (b) Any member of the board traveling outside the state pursuant
3 to authorization of the board, and the approval of the Governor
4 and Director of Finance as provided by Section 11032 of the
5 Government Code, while so engaged shall receive ~~that~~ per diem
6 and *his or her* necessary expenses.

7 (c) *Each member of the board shall receive the salary provided*
8 *for in Section 11564 of the Government Code.*

9 SEC. 10. Section 8554 of the Water Code is amended to read:

10 8554. ~~The board~~ Governor shall ~~elect~~ select one of ~~its~~ the
11 members *of the board* as president.

12 SEC. 11. Section 8575 of the Water Code is amended to read:

13 8575. A member of the board ~~having an interest in lands within~~
14 ~~the drainage district is not disqualified from voting to execute~~ shall
15 *comply with the conflict of interest requirements of Section 87100*
16 *of the Government Code when voting to carry out any part of the*
17 ~~plans a plan~~ of flood control ~~or from~~ and when carrying out the
18 objects of this part.

19 SEC. 12. Section 8577 is added to the Water Code, to read:

20 8577. (a) A board member shall not participate in any board
21 action or attempt to influence any decision or recommendation by
22 any employee of, or consultant to, the board that involves himself
23 or herself or that involves any entity with which the member is
24 connected as a director, officer, consultant, or full- or part-time
25 employee, or in which the member has a direct personal financial
26 interest within the meaning of Section 87100 of the Government
27 Code.

28 (b) A board member shall not participate in any proceeding
29 before any agency as a consultant or in any other capacity on behalf
30 of any person that actively participates in matters before the board.

31 (c) For a period of 12 months after leaving office, a former
32 board member shall not act as agent or attorney for, or otherwise
33 represent, any other person before the board by making any formal
34 or informal appearance or by making any oral or written
35 communication to the board.

36 (d) A board member shall not advocate to the United States
37 Army Corps of Engineers or other federal agency on behalf of any
38 project that has been or is reasonably anticipated to be submitted
39 to the board for review, unless the board authorizes that action in
40 accordance with Section 8560.

SEC. 13. Section 8578 is added to the Water Code, to read:

8578. (a) For the purposes of this section, “ex parte communication” means any oral or written communication concerning matters, other than purely procedural matters, under the board’s jurisdiction that are subject to a vote.

(b) (1) A board member or any person, excluding a staff member of the board acting in his or her official capacity, who intends to influence the decision of a board member on a matter before the board, shall not conduct an ex parte communication.

(2) If an ex parte communication occurs, the board member shall notify the interested party that a full disclosure of the ex parte communication shall be entered in the board’s record.

(3) Communications cease to be ex parte communications when the board member or the person who engaged in the communication with the board member fully discloses the communication and requests in writing that it be placed in the board’s official record of the proceeding.

(c) Notwithstanding Section 11425.10 of the Government Code, the ex parte communications provisions of the Administrative Procedure Act (Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to proceedings of the board to which this section applies.

SEC. 14. Article 2 (commencing with Section 8580) of Chapter 2 of Part 4 of Division 5 of the Water Code is repealed.

SEC. 15. Article 2 (commencing with Section 8580) is added to Chapter 2 of Part 4 of Division 5 of the Water Code, to read:

Article 2. Employees

8580. (a) The board may appoint an executive officer.

(b) The board may appoint a chief engineer.

(c) The board may employ legal counsel and other necessary staff.

SEC. 16. Section 8590 of the Water Code is amended to read:

8590. ~~The~~ *To carry out the primary state interest described in Section 8532, the board may do any of the following:*

(a) Acquire either within or ~~without~~ *outside* the boundaries of the drainage district, by purchase, condemnation or by other lawful means in the name of the drainage district, all lands, rights-of-way,

1 easements, property or material necessary or requisite for the
2 purpose of bypasses, weirs, cuts, canals, sumps, levees, overflow
3 channels and basins, reservoirs and other flood control works, and
4 other necessary purposes, including drainage purposes.

5 (b) Construct, clear, and maintain bypasses, levees, canals,
6 sumps, overflow channels and basins, reservoirs and other flood
7 control works.

8 (c) Construct, maintain, and operate ditches, canals, pumping
9 plants, and other drainage works.

10 (d) Make contracts in the name of the drainage district to
11 indemnify or compensate any owner of land or other property for
12 any injury or damage caused by the exercise of the powers
13 conferred by this division, or arising out of the use, taking, or
14 damage of any property for any of the purposes of this division.

15 (e) *Collaborate with state and federal agencies, if appropriate,*
16 *regarding multiobjective flood management strategies that*
17 *incorporate agricultural conservation, ecosystem protection and*
18 *restoration, or recreational components.*

19 SEC. 17. Section 8610.5 is added to the Water Code, to read:

20 8610.5. (a) (1) The board shall adopt regulations relating to
21 evidentiary hearings pursuant to Chapter 4.5 (commencing with
22 Section 11400) of Part 1 of Division 3 of Title 2 of the Government
23 Code.

24 (2) The board shall hold an evidentiary hearing for any matter
25 that requires the issuance of a permit.

26 (3) The board is not required to hold an evidentiary hearing
27 before making a decision relating to general flood protection policy
28 or planning.

29 (b) The board may take an action pursuant to Section 8560 only
30 after allowing for public comment.

31 (c) The board shall, in any evidentiary hearing, consider all of
32 the following, as applicable, for the purpose of taking any action
33 pursuant to Section 8560:

34 (1) Evidence that the board admits into its record from any party,
35 state or local public agency, or nongovernmental organization with
36 expertise in flood or floodplain management.

37 (2) The best available science that relates to the scientific issues
38 presented by the executive officer, legal counsel, the department,
39 or other parties that raise credible scientific issues.

1 (3) Effects of the proposed decision on the entire State Plan of
2 Flood Control.

3 (4) Effects of reasonably projected future events, including but
4 not limited to, changes in hydrology, climate, and development
5 within the applicable watershed.

6 SEC. 18. Article 8 (commencing with Section 8725) is added
7 to Chapter 3 of Part 4 of Division 5 of the Water Code, to read:

8
9 Article 8. State Plan of Flood Control

10
11 8725. (a) On or before December 31, 2009, the department
12 shall prepare a preliminary report on the status of the State Plan
13 of Flood Control and submit the preliminary report to the board
14 for its adoption in accordance with this section.

15 (b) On or before December 31, 2008, the department shall
16 provide a report to the Governor and Legislature on its progress
17 toward meeting the requirements of subdivision (a).

18 (c) For the purposes of preparing the preliminary report, the
19 department shall inspect the project levees. The preliminary report
20 shall include all of the following:

21 (1) A description and the location of all facilities of the State
22 Plan of Flood Control, including, but not limited to, levees, canals,
23 weirs, bypasses, and pumps. The description shall include the
24 identification of the agency responsible for maintaining the facility.

25 (2) An evaluation of the performance and deficiencies of project
26 levees and other facilities of the State Plan of Flood Control.

27 (3) A prioritized list of actions necessary to improve the
28 performance of, and to the maximum extent practicable, to
29 eliminate deficiencies of, project levees and other facilities of the
30 State Plan of Flood Control, using the following criteria for
31 establishing its priority list:

32 (A) The likelihood of failure by the levee or facility.

33 (B) The current population protected by the levee or facility.

34 (C) The public safety infrastructure protected by the levee or
35 facility. For purposes of this subparagraph, "public safety
36 infrastructure" means the street and highway evacuation routes,
37 hospitals, and other public safety infrastructure necessary to
38 respond to a flood emergency.

39 (4) An examination of both structural and nonstructural methods
40 for improving the performance and eliminating deficiencies of

1 project levees and other facilities of the State Plan of Flood Control,
2 and, wherever feasible, a description of actions intended to meet
3 multiple objectives, including each of the following:

4 (A) Reducing the risk to human life, health, and safety from
5 flooding.

6 (B) Promoting natural dynamic hydrologic and geomorphic
7 processes.

8 (C) Reducing damages from flooding.

9 (D) Increasing and improving the quantity, diversity, and
10 connectivity of riparian, wetland, floodplain, and shaded riverine
11 aquatic habitats, including agriculture and the ecological values
12 of these lands.

13 (E) Minimizing the flood management system operation and
14 maintenance requirements.

15 (F) Promoting the recovery and stability of native species
16 populations and overall biotic community diversity.

17 (5) A description of the historical development of the State Plan
18 of Flood Control.

19 (6) A description of the roles and responsibilities of federal,
20 state, and local agencies.

21 (7) A description of all other relevant projects, programs,
22 activities, and policies that are a material component of the State
23 Plan of Flood Control.

24 (8) An examination to determine if the listing of facilities in
25 Section 8361 is properly inclusive or if additions or deletions are
26 appropriate, together with any revisions of roles and
27 responsibilities.

28 (9) An examination to determine which additional existing flood
29 control facilities, if any, should be added to the State Plan of Flood
30 Control. In determining whether a facility should be added to the
31 State Plan of Flood Control, the department and the board shall
32 consider the following:

33 (A) Whether the facility operates in coordination with other
34 facilities of the State Plan of Flood Control.

35 (B) Whether the facility protects any contiguous area with more
36 than 10,000 residents.

37 (C) Whether the facility protects public safety infrastructure as
38 defined in subparagraph (C) of paragraph (3).

39 (d) On or before December 31, 2010, the board shall adopt and
40 submit to the Governor and the Legislature a final report that

1 includes any changes that it determines to be necessary based on
2 the public comments received pursuant to subdivision (e).

3 (e) (1) The board shall conduct at least two public meetings to
4 consider public comments prior to adopting the report. At least
5 one meeting shall be conducted at a location in the Sacramento
6 Valley and at least one meeting shall be conducted at a location
7 in the San Joaquin Valley or the Sacramento-San Joaquin Delta
8 as described in Section 12220.

9 (2) The board shall publish the department's preliminary report
10 prepared pursuant to subdivision (a) on its Internet Web site at
11 least 30 days before the date of the first public meeting required
12 by paragraph (1).

13 (3) To the extent feasible, the board shall provide outreach to
14 disadvantaged communities to promote access and participation
15 in the meetings.

16 (f) The department shall assist the board in developing the
17 necessary information that responds to public comments for
18 inclusion in the final report.

19 (g) It is the intent of the Legislature that the report to the
20 Governor and the Legislature on the status of the state flood control
21 system become the basis for developing and implementing one or
22 more natural communities conservation plans or joint natural
23 communities conservation plan/habitat conservation plans for flood
24 management projects.

25 8726. (a) On or before December 31, 2010, the board shall
26 prepare and adopt a strategic flood protection plan, consistent with
27 Section 8725. The board shall make relevant maps available to the
28 public and shall post these maps on its Internet Web site.

29 (b) The board shall establish and update, at a minimum, every
30 five years, standards for levee construction, operation, and
31 maintenance.

32 (c) The board shall review and comment on local and regional
33 land use plans regarding their compliance with flood protection
34 and public safety standards adopted by the board.

35 (d) The board shall review flood control plans adopted by local
36 public agencies regarding the adequacy of those plans to protect
37 public safety. The board may recommend revisions to those plans
38 to improve public safety protection.

39 (e) The board shall not allocate any funds to a local public
40 agency for a flood control project unless the board determines that

1 the project ensures adequate flood protection consistent with
2 existing state and federal law.

3 8727. (a) (1) A local agency that is responsible for maintaining
4 a unit or portion of the State Plan of Flood Control, at a public
5 hearing of the local agency, upon approval of the board, may
6 submit a petition to the board and the United States for
7 decertification of the flood control facility as a part of the State
8 Plan of Flood Control.

9 (2) Not less than 90 days before the proposed submittal of the
10 petition, the local agency shall provide notice to the department,
11 the board, any affected county, any affected city, and any affected
12 levee district. The notice shall specify the reasons for the proposed
13 decertification and the local agency's plan for the levee if the
14 decertification is approved.

15 (3) The board may approve the submittal of the petition at a
16 public hearing if the county board of supervisors of any county,
17 and the city council of any city that receives protection from the
18 levee provides written approval for the submittal of the petition.

19 (b) The board may approve a petition for decertification
20 submitted in accordance with subdivision (a) if it determines that
21 other levees will not be adversely affected and that other elements
22 of the State Plan of Flood Control will not be adversely affected,
23 and that it is in the best interest of the state.

24 (c) The decertification shall be effective upon the approval of
25 the decertification by the board and the United States.